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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|-----------------------------|
| 10/575,086 | 04/10/2006 | Thomas Mannebach | 002097 | 8726 |
| 23456 7590 04/05/2010 WADDEY & PATTERSON, P.C. 1600 DIVISION STREET, SUITE 500 NASHVILLE, TN 37203 | | | EXAMINER SINGH, SUNIL | |
| | | | ART UNIT 3672 | PAPER NUMBER |
| | | | NOTIFICATION DATE 04/05/2010 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/575,086 | Applicant(s) MANNEBACH ET AL. | |
| | Examiner Sunil Singh | Art Unit 3672 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 06 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 15-22 and 28-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15-22, 28-38 and 41-50 is/are rejected.
- 7) ☒ Claim(s) 39 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the clutch called for in numerous claims must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,4, 5,6,7,8,9,12,16,18,20,21,22,28,30,31,32,33,34,35,36,42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of German document (719441)

Swisher, Jr. '147 discloses an automotive stabilizer or recycler (10) for producing carriageways by stabilizing insufficiently stable soils or by recycling road surfaces, with a machine chassis (12) supported by a running gear (14) having two axles a milling drum (56) mounted between the two axles of the running gear (14) adapted to be pivoted in relation to the machine chassis (12), a shaft of the milling drum is mounted in pivoting arms (19,54) and runs transversely to the direction of travel, a cover (18) surrounding the milling drum (20), a combustion engine (24) supported by the machine chassis (12) with at least one output shaft (64) for the drive power required for driving the milling drum (56), whereby at least one mechanical power transmission device (see Fig. 1) transfers the drive power from the output shaft to the milling drum (56), the at least one mechanical power transmission device (see Fig.1), together with the milling drum (56) are carried by the pivoting arms (19,54), and the pivoting arms are pivoted for rotation about the axis of an output shaft (see shaft linked to member 62) linked to the combustion engine (24). Re claims 7-9, Lifting device (30). Swisher, Jr. '147 discloses

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the invention substantially as claimed. However, Swisher, Jr. 147 lacks a combustion engine fixed to a machine chassis and the at least one output shaft being arranged transversely to the direction of travel. German document teaches a combustion engine (13) fixed to a machine chassis, and the at least one output shaft (12) being arranged transversely to the direction of travel. It would have been considered obvious to one of ordinary skill in the art to modify Swisher, Jr. '147 by substituting an engine/output shaft arrangement as taught by German document for the PTO/transmission/differential arrangement as disclosed by Swisher, Jr. '147 since such an arrangement makes the arrangement less complicated.

With regards to claims 5,36, 45 it would have been considered obvious to modify Swisher, Jr. '147 to include a transversely movable operator's platform since such an arrangement allows for better view while cutting.

With regards to claims 30,33, it would have been considered obvious to modify Swisher, Jr. '147 to have the mechanical transmission means as called for in claim 30 since such an arrangement is conventional.

With regards to claims 35, 42-44, it would have been considered obvious to one of ordinary skill in the art to modify Swisher, Jr. '147 to include the mechanical power transmission means on only one pivotable arm as taught by German document since such a modification would require less working parts.

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4. Claims 3,15,17,19,41,47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of German document '441 as applied to claims 1,2,31 above, and further in view of Swisher, Jr. (US 5190398).

Swisher, Jr. '147 (once modified) discloses the invention substantially as claimed. However, the (once modified) Swisher, Jr. '147 is silent about including a clutch. Swisher, Jr. '398 teaches a clutch (154). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Swisher, Jr. '147 to include a clutch as taught by Swisher, Jr. '398 in order to be able to disengage the engine from the cutter.

5. Claims 7-11,22,29,37,38,46, are rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of German document '441 as applied to claim 6,37, 42 above, and further in view of Allin (US 2111134).

Swisher, Jr. '147 (once modified) discloses the invention substantially as claimed. However, the (once modified) Swisher, Jr. '147 is silent about including a lifting device having a link mechanism. Allin teaches a lifting device having a link mechanism (26,34',34,50,40). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Swisher, Jr. '147 by substituting the lifting device as taught by Allin for the lifting device disclosed by Swisher, Jr. '147 since it is obvious to substitute equivalent parts for performing equivalent functions.

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With regards to claim 29, 38, it would have been considered obvious to modify Swisher Jr. '147 (as modified above) to have the extension of the piston cylinder unit to raise the working drum and contraction of the piston cylinder unit lower the working drum since such a modification is an simple reversal of parts.

6. Claims 7-9,22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of German document '441 as applied to claim 6 above, and further in view of Lindbeck et al. (US 3409088).

Swisher, Jr. '147 (once modified) discloses the invention substantially as claimed. However, the (once modified) Swisher, Jr. '147 is silent about including a lifting device having a link mechanism. Lindbeck et al. teaches a lifting device having a link mechanism (60,57). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Swisher, Jr. '147 by substituting the lifting device as taught by Lindbeck et al. for the lifting device disclosed by Swisher, Jr. '147 since it is obvious to substitute equivalent parts for performing equivalent functions.

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7. Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of Allin (US 2111134).

Swisher, Jr. '147 discloses the invention substantially as claimed. However, the Swisher, Jr. '147 is silent about including a lifting device having a link mechanism. Allin teaches a lifting device having a link mechanism (26,34',34,50,40). It would have been considered obvious to one of ordinary skill in the art to modify Swisher, Jr. '147 by substituting the lifting device as taught by Allin for the lifting device disclosed by Swisher, Jr. '147 since it is obvious to substitute equivalent parts for performing equivalent functions.

With regards to claim 49, it would have been considered obvious to modify Swisher Jr. '147 (as modified above) to have the extension of the piston cylinder unit to raise the working drum and contraction of the piston cylinder unit lower the working drum since such a modification is an simple reversal of parts.

Allowable Subject Matter

8. Claims 39,40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sunil Singh/
Primary Examiner, Art Unit 3672

Sunil Singh
Primary Examiner
Art Unit 3672

SS 3/10/10